

EVALUATOR MANUAL TRANSMITTAL SHEET
2014 Adult Community Care Facilities and
Residential Care Facilities for the Chronically Ill
Implementation Plans

<u>Distribution:</u> <input type="checkbox"/> All Child Care Evaluator Manual Holders <input checked="" type="checkbox"/> All Residential Care Evaluator Manual Holders <input type="checkbox"/> All Evaluator Manual Holders	<u>Transmittal No.</u> 15APX-09
	<u>Date Issued</u> September 2015

Subject:

Appendix- A – 2014 Chaptered Legislation
Adult Community Care Facilities and Residential Care Facilities for the Chronically Ill.

Reason for Change:

This document transmits implementation plans that include summaries of, and implementation procedures for, the legislation chaptered in 2014 affecting Adult Community Care Facilities and Residential Facilities for the Chronically Ill. Statutes referenced in this document are operative on January 1, 2015, unless otherwise stated.

Filing Instructions:

REMOVE: 15APX-05

INSERT: 2014 Chaptered Legislation 15APX-09 for Adult Community Care Facilities and Residential Care Facilities for the Chronically Ill. Do not remove similar documents from the previous years.

Approved:

Original signed by Seton Bunker

9/23/2015

SETON BUNKER, Acting Bureau Chief
Policy Development Bureau
Community Care Licensing Division

Date

Contact Person: Seton Bunker

Phone Number: (916) 651-3495

2014 CHAPTERED LEGISLATION
Summaries and Implementation Plans

**ADULT COMMUNITY CARE FACILITIES AND RESIDENTIAL CARE FACILITIES FOR
THE CHRONICALLY ILL**

ACTION REQUIRED		
BILL INFORMATION	SUBJECT	PAGE
Assembly Bill 1821 (Gordon) Chapter 5, Statutes of 2014	<p>Community Care Facilities (CCF), Residential Care Facilities for Persons with Chronic Life-Threatening Illness (RCF-CI), and Residential Care Facilities for the Elderly (RCFE)</p> <p>An act to create the Medical Foster Home (MFH) pilot program, a Pilot Program for Medical Foster Homes for Veterans.</p>	1
Assembly Bill (AB) 2236 (Maienschein), Chapter 813, Statutes of 2014	<p>Community Care Facilities (CCFs), Children’s Residential Facilities, Residential Care Facilities for the Elderly (RCFE), Residential Care Facilities for the Chronically Ill (RCF-CI), Child Care Centers (CCCs) and Family Child Care Homes (FCCHs).</p> <p>Amends Sections 1548, 1568.0822, 1569.49, 1596.99 and 1597.58 of the Health and Safety Code, increasing civil penalties for violations determined to have resulted in death, serious bodily injury or physical abuse.</p>	2
Assembly Bill 2386 (Mullin), Chapter 3, Health and Safety Code, Statutes of 2014	<p>Community Care Facilities (CCFs), Children’s Residential Facilities and Certified Family Homes, Residential Care Facilities for the Elderly (RCFE), Residential Care Facilities for the Chronically Ill (RCF-CI), Child Care Centers (CCCs) and Family Child Care Homes (FCCHs).</p> <p>Amends Sections 1597.45 and 1597.46 and added Sections 1503.2, 1568.043, 1569.311, 1596.954, and 1597.543 to the Health and Safety Code, establishing carbon monoxide detector requirements for all licensed facilities and certified family homes.</p>	14

Senate Bill 856 (Committee on Budget and Fiscal Review) Chapter 3, Health and Safety Code, Chapter 6, Welfare and Institutions Code, Statutes of 2014	<p>Group Homes, Enhanced Behavioral Supports Homes (EBSH) pilot program. EBSHs are a subcategory of Group Homes.</p> <p>Among other things, an act to create the EBSH pilot program.</p>	16
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Unless otherwise noted, all new legislation becomes effective on January 1, 2015. When conducting licensing visits, Licensing Program Analysts (LPAs) should, to the extent practical, make sure that providers are aware of any new requirements. However, regardless of whether this information is provided, it is the licensee's responsibility to be aware of any new requirements affecting their program.

ACTION REQUIRED

Assembly Bill 1821 Medical Foster Homes (MFH)

Affects: Community Care Facilities (CCF), Residential Care Facilities for Persons with Chronic Life-Threatening Illness (RCF-CI), and Residential Care Facilities for the Elderly (RCFE).

Subject: Pilot Program for Medical Foster Homes for Veterans

Summary: [Assembly Bill 1821](#) (Gordon, 2014) created the Medical Foster Home (MFH) pilot program. This pilot program exempts MFHs from licensure or regulation by the California Department of Social Services (CDSS) as a CCF, RCFE, or RCF-CI, provided that specified federal requirements are satisfied. The bill would also require the United States Department of Veterans Affairs (USDVA) to obtain criminal background information for caregivers and specified individuals residing in the home.

The USDVA's MFH program provides a specialized, long-term, home-like care option for veterans that are appropriate for their specialized medical needs utilized successfully in other states. This bill allows for a pilot program with data collection and evaluation by the State Auditor to determine whether the USDVA's MFH program will be a viable option in California for veterans. These facilities will be regulated directly by the USDVA.

Implementation: This bill is effective January 1, 2015, with the pilot program commencing June 1, 2015 and 2015, remaining in effect through January 1, 2018.

Licensing Program Analysts

If there is a complaint that a facility is unlicensed and CDSS believes it is an MFH, the Licensing Program Analyst should call the MFH Program Coordinator to verify if the facility is a MFH facility. When leaving a message, indicate the urgency of the call. The following is the MFH Coordinator's direct contact information:

Sacramento Veterans Affairs Medical Center
California Medical Foster Home Program Coordinator
Phone: (916) 640-8451
Fax: (916) 640-0995

In the event the Licensing Program Analyst verifies that the complaint is for an MFH, the Licensing Program Analyst should contact the complainant and refer them to the Sacramento Veterans Affairs Medical Center. In addition, for general inquiries about the USDVA's MFH pilot program or the USDVA services, the Licensing Program Analyst should refer them to the Sacramento Veterans Affairs Medical Center. The Center's contact information is as follows:

Sacramento Veterans Affairs Medical Center
For Public Complaints and General Inquiries
(916) 843-7000 or (800) 382-8387

ACTION REQUIRED

Assembly Bill 2236 (Maienschein / Stone), Chapter 813, Statutes of 2014

This bill becomes effective July 1, 2015

Affects: Adult Day Programs (ADP), Community Crisis Homes (CCH), Enhanced Behavioral Supports Homes (EBSH-ARF), Social Rehabilitation Facilities (SRF), Residential Care Facilities for Persons with Chronic Life-Threatening Illness (RCF-CIs), and Adult Residential Facilities (ARF).

Note: Does not affect Adult Residential Care Facilities for Persons with Special Health Care Needs (ARFPSHNs).

Subject: Care facilities: civil penalties

Summary: [AB 2236](#) enacts new civil penalties in cases where the Department determines that a violation of licensing standards resulted in the death or serious bodily injury, or constitutes physical abuse of a client in care. The bill establishes an appeal procedure specific to these civil penalties.

Note on the Bill Language

AB 2236 enacted new sections of statute to become operative on July 1, 2015, and placed these new sections directly below the previous, identically-numbered sections. The old sections became inoperative on that date, and on January 1, 2016, the old sections will be removed from statute.

Until that time, it can be difficult to distinguish between the operative and inoperative sections. The words “Inoperative July 1, 2015” are located in the italicized statement below the inoperative section, whereas the current, operative section has the following statement below it: “(Repealed (in Sec. 1) and added by Stats. 2014, Ch. 813, Sec. 2. Effective January 1, 2015. Section operative July 1, 2015, by its own provisions.)”

New Civil Penalties in Cases of Death, Serious Bodily Injury or Physical Abuse

AB 2236 imposes new civil penalties for a violation that results in death or serious bodily injury, or that constitutes physical abuse of a client in care. Specific civil penalty amounts have been set for each facility type affected. Civil penalties for a violation resulting in death are higher than those for a violation resulting in serious bodily injury or constituting physical abuse.

For Adult Day Programs, civil penalty amounts are scaled in relation to capacity. AB 2236 specifies “capacity” to be the total capacity of “all of the licensee’s facilities,” not merely the licensee’s facilities of that type. For example, if a licensee operated an ADP with a capacity of 25, a group home with a capacity of 15, and an RCF-CI with a capacity of 20, this bill would measure the total capacity of all of the licensee’s facilities at 60 and require a civil penalty for a capacity within that specified range, regardless of which facility was issued the citation. Additional information will be provided in the future on how to make capacity determinations in situations where there are co-licensees or corporations and for facility types where there is not a capacity.

The prescribed amounts are summarized in the table below.

Facility Type	Capacity	Civil Penalty for Death	Civil Penalty for Serious Bodily Injury / Physical Abuse
Adult Residential Facilities (ARF), Community Crisis Homes (CCH), Enhanced Behavioral Supports Homes (EBSH-ARF), Social Rehabilitation Facilities (SRF)	All sizes	\$15,000	\$10,000
ADP	≤ 50	\$7,500	\$2,500
	More than 50	\$10,000	\$5,000
RCF-CI	All sizes	\$15,000	\$10,000

This new statutory civil penalty amount for a violation resulting in the death of a client in care takes precedence over existing regulations or statute, as applicable, which established an immediate civil penalty of \$150 for these violations. Licensees shall only be assessed the amounts prescribed above, and shall not be assessed the \$150 in lieu of or in addition to this civil penalty (see exception for ARFPSHNs, below).

Existing regulations or statute that impose an immediate \$150 civil penalty for “injury” are still in effect – the Licensing Program Analyst, in consultation with the Enforcement Attorney, will have to determine whether a particular injury rises to the level of “serious bodily injury” or physical abuse, as defined in statute (definitions are provided below).

ARFPSHNs are not subject to the civil penalties enacted by AB 2236 for a violation resulting in death or serious bodily injury or that constitutes physical abuse. If the Community Care Licensing Division (CCLD) determines that a violation resulted in death or serious bodily injury, or constituted physical abuse of a client at one of these facilities, the facility shall be cited the \$150 civil penalty for sickness, injury or death as specified in California Code of Regulations (CCR), Title 22 Division 6 section 80054.

- **Definitions of “Serious Bodily Injury” and “Physical Abuse”:** This bill enacts specific definitions of these crucial terms, according to facility type.

“Serious Bodily Injury” for ADP, ARF, EBSH-ARF, CCH, RCF-CI and SRF is defined in PEN §[243\(f\)\(4\)](#): “‘Serious bodily injury’ means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.”

“Physical Abuse” for ADP, ARF, EBSH-ARF, CCH, RCF-CI, and SRF is defined in WIC §[15610.63](#): “‘Physical abuse’ means any of the following:”

- Assault, as defined in PEN §[240](#).

- Battery, as defined in PEN §[242](#).
 - Assault with a deadly weapon or force likely to produce great bodily injury, as defined in PEN §[245](#).
 - Unreasonable physical constraint, or prolonged or continual deprivation of food or water.
 - Sexual assault, that means any of the following:
 - Sexual battery, as defined in PEN §[243.4](#).
 - Rape, as defined in PEN §[261](#).
 - Rape in concert, as described in PEN §[264.1](#).
 - Spousal rape, as defined in PEN §[262](#).
 - Incest, as defined in PEN §[285](#).
 - Sodomy, as defined in PEN §[286](#).
 - Oral copulation, as defined in PEN §[288a](#).
 - Sexual penetration, as defined in PEN §[289](#).
 - Lewd or lascivious acts as defined PEN §[288\(b\)\(2\)](#).
 - Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:
 - For punishment.
 - For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given.
 - For any purpose not authorized by the physician and surgeon.
- ***Requires Director's Approval:*** All civil penalties assessed for death, serious bodily injury, or physical abuse must first be approved by the Director.
 - ***Appeal Process:*** AB 2236 enacted a separate appeal process applicable only to those civil penalties assessed under its provisions. This process is identical for all facility types, consisting of four levels (three within CCLD). Those levels are: 1) Regional Manager; 2) Program Administrator; and 3) CCLD Deputy Director. Licensees may further appeal a civil penalty to an Administrative Law Judge.
 - ***Appeals of Civil Penalties to be Merged Into Administrative Actions:*** The bill provides that if the Department takes an action to suspend or revoke a license due to the violation that triggered an AB 2236 civil penalty, any separate appeal of the civil penalty must be halted, and the civil penalty instead reviewed in conjunction with the action against the license.e This provision applies to all facility types affected by the bill.

IMPLEMENTATION

If a Licensing Program Analyst suspects that a violation may have resulted in death or serious bodily injury, or constituted physical abuse, the Licensing Program Analyst should notify his or her Licensing Program Manager and Regional Manager. If the Licensing Program Analyst suspects that there is an immediate risk to the safety of a client, the Licensing Program Analyst should follow established procedures to ensure the client's safety.

If additional information is necessary to determine the facts of the case, the Investigations Branch may be asked to investigate. Please see the Evaluator Manual, Reference Material for Complaints, ([Section 3-2010](#)) regarding Priority I and II complaints, and the Evaluator Manual, Reference Material for Enforcement Actions ([Section 1-0620](#)) regarding referrals to the Investigations Branch.

The Licensing Program Analyst should cite violation(s) according to established procedures, and if necessary, should work with the licensee to develop a plan of correction. Notwithstanding civil penalties for a violation that results in death, serious bodily injury or physical abuse, all other civil penalties are assessed according to established procedures. The civil penalty for a violation suspected of resulting in death, serious bodily injury or physical abuse will not be assessed at the time of the site inspection, because the final determination on these types of violations can only be made by the CDSS Director or his or her designee. Instead, it should be noted on the licensing report that a civil penalty determination is pending.

The Licensing Program Analyst and his or her Licensing Program Manager and Regional Manager will together work with an enforcement attorney to discuss the circumstances of the violation. The enforcement attorney should assist in determining whether the violation meets the statutory definition of serious bodily injury or physical abuse, as opposed to other types of injury or sickness.

Once it has been tentatively established that a violation resulting in death, serious bodily injury or physical abuse occurred, the Regional Manager must notify the Assistant Program Administrator and Program Administrator, and request an approval of the assessment by the Director or the Director's Designee. The request must include a copy of all relevant documentation, including all licensing reports (Facility Evaluation Report LIC 809, Complaint Investigation Report LIC 9099, Detail Supportive Information LIC 812, etc.), the complaint (when applicable), citation(s) and any supporting documentation regarding the investigation.

A civil penalty for a violation that resulted in death or serious bodily injury, or that constituted physical abuse, can be assessed only after it has been approved by the Director/Director's Designee. Once the Regional Office has tentatively established that such a violation occurred, the Regional Manager must notify the Assistant Program Administrator and Program Administrator, and request an approval of the assessment by the Director/Director's Designee. The request must include a copy of all relevant documentation, including all licensing reports (Facility Evaluation Report LIC 809, Complaint Investigation Report LIC 9099, Detail Supportive Information LIC 812, etc.), the complaint (when applicable), citation(s) and any supporting documentation regarding the investigation.

If approved by the Director/Director's Designee, the Licensing Program Analyst shall conduct a subsequent visit to the facility to issue the civil penalty, or if the Regional Office determines it is appropriate, a non-compliance conference may be held. The licensee should be notified using the interim civil penalty notice statement provided in Addendum A (in the case of death) or B (in the case of serious bodily injury or physical abuse), until the appropriate Civil Penalty Assessment form (LIC 421) series is developed. The penalty amount must be appropriate to the violation type, facility type and (if applicable) the capacity of all the licensee's facilities. At the time of assessment, the Licensing Program Analyst should inform the licensee of his or her appeal rights specific to this type of civil penalty.

A copy of both the licensing report and the civil penalty notice statement should be forwarded to the Civil Penalty Coordinator for invoicing and collection.

If a licensee is assessed a civil penalty for a violation for serious bodily injury or physical abuse and through later evidence the CCLD determines that the violation resulted in the death of a client, the CCLD may revoke the initial citation and issue a new one. When this occurs, the Licensing Program Analyst must obtain the approval outlined above and, once approved by the Director/Director's Designee, deliver an amended Facility Evaluation Report (LIC 809) or Complaint Investigation Report (LIC 9099) that includes the appropriate civil penalty notice statement (Addendum A) language to the licensee.

Until the Department has adopted regulations, developed forms and updated the Evaluator Manual, Licensing Program Analysts will, in applicable cases, follow statutory guidelines and utilize the interim forms (attached).

Appeals

The licensee may appeal the assessment of a civil penalty for a violation that the CCLD determined resulted in death or serious bodily injury, or that constituted physical abuse. AB 2236 prescribes an appeals process specific to these types of civil penalties. Certain aspects of this process differ from the appeals process for other types of civil penalties. The specific appeal rights for these violations have been provided in Addendums A (death) and B (serious bodily injury/physical abuse).

The licensee must submit a request for a formal review in writing, within 10 days of receipt of the notice of the civil penalty assessment. All supporting documentation for the appeal must be submitted as part of the written request.

Level 1: Regional Manager

When a Regional Manager receives an appeal for the assessment of a civil penalty, the Licensing Program Analyst must prepare the appropriate materials for the review. These materials include copies of the licensing reports (e.g., Facility Evaluation Report LIC 809, Complaint Investigation Report LIC 9099, Detail Supportive Information LIC 812, etc.), facility file, and any evidence or supporting documentation the Licensing Program Analyst may have gathered to support the initial violation determination.

If the Regional Manager determines that the civil penalty was assessed correctly, the Regional Manager must notify the licensee in writing of this determination within 60 days of the request to review the assessment of the civil penalty. Please use the attached letter in Addendum C for this purpose, which includes information on the licensee's right to further appeal, until the appropriate Civil Penalty Assessment form (LIC 421) series and the Applicant/Licensee Rights form (LIC 9058) are revised to include the specific appeal rights for licensees for a violation resulting in death, serious bodily injury or that constitutes physical abuse.

If the Regional Manager determines that the civil penalty was assessed incorrectly, then the Regional Manager may do one of the following, using the Deficiency/Penalty Review form (LIC 178). Amended assessments should include the licensee's appeal rights for any violation cited.

- **Amended Violation (death):** If a violation occurred but it was determined upon review by the Regional Manager that the violation did not result in the death of a client, the civil penalty can be amended for the amount appropriate for the violation (e.g., failure to correct the violation by the plan of correction date; immediate civil penalty for a specified serious violation; serious bodily injury or physical abuse). The Regional Manager must provide the Deficiency/Penalty Review (LIC 178) and include language from Addendum B for a violation that was determined upon review to have not resulted in death, but that did result in serious bodily injury or physical abuse.
- **Amended Violation (serious bodily injury or physical abuse):** If a violation occurred but it was determined upon review by the Regional Manager that the violation did not result in the serious bodily injury or physical abuse of a client, the civil penalty can be amended for the amount appropriate for the violation (e.g., failure to correct a violation by the plan of correction date, or an immediate civil penalty for a specified serious violation). The Regional Manager must provide the Deficiency/Penalty Review form (LIC 178) to the licensee within 60 days of the licensee's request for review.
- **Deficiency Dismissed:** Upon review the Regional Manager determines that there is not sufficient evidence to support the citation for a violation. This information is noted on the Deficiency/Penalty Review form (LIC 178) and provided to the licensee within 60 days of request for review by the licensee.

A copy of both the amended licensing report and the amended civil penalty notice statement should be forwarded to the Civil Penalty Coordinator for invoicing and collection.

Level 2: Program Administrator

When a Program Administrator receives an appeal for the assessment of a civil penalty, he or she should request all relevant material from the Regional Manager and be briefed by the Regional Manager who handled the initial appeal. The licensee shall be notified in writing of the program administrator's decision within 60 days of the request for review. Upon a final determination of the appeal, the Regional Manager must follow the procedure outlined above regarding the response to the licensee.

Level 3: Deputy Director

When the Deputy Director receives an appeal for the assessment of a civil penalty, the Regional Manager must prepare information as described above. Upon a final determination of the appeal, the Regional Manager must follow the procedure outlined above regarding the response to the licensee. The licensee shall be notified in writing of the deputy director's decision within 60 days of the request for review. If the decision is upheld, the licensee must be provided information on how to request an Administrative Law Judge review. Please see Addendum C for information to be provided to the licensee. Licensees should be directed to submit the request for an Administrative Law Judge review to the Regional Office with jurisdiction over the facility.

Level 4: Administrative Law Judge

Upon receipt of the licensee's request for an Administrative Law Judge to the Regional Office, the Licensing Program Analyst will be tasked with preparing a Statement of Facts. The completed Statement of Facts packet is then given to the Licensing Program Manager to review, initial, and forward to the Regional Manager for approval. Following approval by the Regional Manager, the

Statement of Facts will be sent to the Assistant Program Administrator for review and approval. After final approval by the Assistant Program Administrator, the original Statement of Facts (including exhibits) is submitted to the Legal Division.

If, in addition to an assessment of civil penalties, the CCLD files an administrative action to temporarily suspend or revoke the facility license that includes violations relating to the assessment of the civil penalties described above, the CCLD review of the pending appeal shall cease and the assessment of civil penalties shall be heard as part of the administrative action process.

CCLD is required to amend regulations to reflect these changes by January 1, 2016. The Department will adopt regulations to conform to new civil penalty and appeal requirements, and will update the Evaluator Manual to account for these new civil penalties and for new statutory definitions of “serious bodily injury” and “physical abuse.” The CCLD will also develop forms specific to the new civil penalties enacted.

For legislative information related to this law, see:

[Bill Text – AB-2236 Care facilities: civil penalties](#)

ADDENDUM A
ASSEMBLY BILL 2236 INTERIM CIVIL PENALTY NOTICE
“Noticing Requirements”

Death of a Client/Child/Resident

The following statement shall be included in all reports (LIC 809 or LIC 9099) in which a civil penalty is being assessed for a violation that resulted in the death of a person receiving care and supervision by a licensee, in specified facilities licensed by the Community Care Licensing Division, pursuant to Health and Safety Code Sections 1548, 1568.0822, 1569.49, 1596.99, or 1597.58, until the appropriate Civil Penalty Assessment (LIC 421) form series is developed.

Civil penalties shall be assessed against any licensee cited for a violation that resulted in the death of a person receiving care and supervision from a licensee. Per Health and Safety Code section _____, you are hereby notified that a \$_____ civil penalty has been assessed.

You will receive an invoice in the mail. Payment is due when billed. Payment must be made by a personal, business or cashier's check or money order made payable to the "California Department of Social Services". Please write the facility number and invoice number on your check and include a copy of your invoice with payment. You will find the invoice number on the invoice. **DO NOT SEND CASH.**

APPEAL RIGHTS

The licensee has a right without prejudice to discuss any disagreement concerning the proper application of licensing laws and regulations with the licensing agency. When civil penalties are involved, the licensee may request a formal review by the licensing agency to amend, extend the due date, or to dismiss the penalty. Requests for civil penalty appeals must be in writing and must be postmarked within 10 days of receipt of this form providing notice of the civil penalty assessment. The request must be addressed to the Regional Manager of the licensing office with jurisdiction over the facility. The licensing agency review of the appeal may be conducted based upon information provided in writing by the licensee. The licensee may request an office interview to provide additional information. If the Regional Manager determines that the civil penalty was not assessed in accordance with applicable statutes or regulations of the Department, he or she may amend or dismiss the civil penalty. The licensee shall be notified in writing of the Regional Manager's decision within 60 days of the request to review the assessment of the civil penalty.

The licensee may further appeal to the Program Administrator of the Community Care Licensing Division within 10 days of receipt of the notice of the Regional Manager's decision and shall provide all supporting documentation at that time. If the Program Administrator determines that the civil penalty was not assessed in accordance with applicable statutes or regulations of the Department, he or she may amend or dismiss the civil penalty. The licensee shall be notified in writing of the Program Administrator's decision within 60 days of the request to review the Regional Manager's decision.

The licensee may further appeal to the Deputy Director of the Community Care Licensing Division within 10 days of receipt of the notice of the Program Administrator's decision and shall provide all supporting documentation at that time. If the Deputy Director determines that

the civil penalty was not assessed in accordance with applicable statutes or regulations of the Department, he or she may amend or dismiss the civil penalty. The licensee shall be notified in writing of the Deputy Director's decision within 60 days of the request to review the Program Administrator's decision.

Upon exhausting the Deputy Director review, a licensee may appeal to an Administrative Law Judge. The licensee must submit a written request for this review to the Regional Manager at the licensing office with jurisdiction over the facility. Proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the Department shall have all the powers granted by those provisions. In all proceedings conducted in accordance with this section, the standard of proof shall be by a preponderance of the evidence.

ADDENDUM B
ASSEMBLY BILL 2236 INTERIM CIVIL PENALTY NOTICE
“Noticing Requirements”

Physical Abuse or Serious Bodily Injury

The following statement shall be included in all reports (LIC 809 or LIC 9099) in which a civil penalty is being assessed for a violation that constitutes physical abuse or resulted in serious bodily injury of a person receiving care and supervision by a licensee of specified facilities licensed by the Community Care Licensing Division pursuant to Health and Safety Code Sections 1548, 1568.0822, 1569.49, 1596.99, or 1597.58, until the appropriate Civil Penalty Assessment (LIC 421) form series is developed.

Civil penalties shall be assessed against any licensee cited for a violation that constitutes physical abuse or resulted in serious bodily injury of a person receiving care and supervision from a licensee. Per Health and Safety Code section _____, you are hereby notified that a \$ _____ civil penalty has been assessed.

You will receive an invoice in the mail. Payment is due when billed. Payment must be made by a personal, business or cashier's check or money order made payable to the "California Department of Social Services". Please write the facility number and invoice number on your check and include a copy of your invoice with payment. You will find the invoice number on the invoice. **DO NOT SEND CASH.**

APPEAL RIGHTS

The licensee has a right without prejudice to discuss any disagreement concerning the proper application of licensing laws and regulations with the licensing agency. When civil penalties are involved, the licensee may request a formal review by the licensing agency to amend, extend the due date, or to dismiss the penalty. Requests for civil penalty appeals must be in writing and must be postmarked within 10 days of receipt of this form providing notice of the civil penalty assessment. The request must be addressed to the Regional Manager of the licensing office with jurisdiction over the facility. The licensing agency review of the appeal may be conducted based upon information provided in writing by the licensee. The licensee may request an office interview to provide additional information. If the Regional Manager determines that the civil penalty was not assessed in accordance with applicable statutes or regulations of the Department, he or she may amend or dismiss the civil penalty. The licensee shall be notified in writing of the Regional Manager's decision within 60 days of the request to review the assessment of the civil penalty.

The licensee may further appeal to the Program Administrator of the Community Care Licensing Division within 10 days of receipt of the notice of the Regional Manager's decision and shall provide all supporting documentation at that time. If the Program Administrator determines that the civil penalty was not assessed in accordance with applicable statutes or regulations of the Department, he or she may amend or dismiss the civil penalty. The licensee shall be notified in writing of the Program Administrator's decision within 60 days of the request to review the Regional Manager's decision.

The licensee may further appeal to the Deputy Director of the Community Care Licensing Division within 10 days of receipt of the notice of the Program Administrator's decision and

shall provide all supporting documentation at that time. If the Deputy Director determines that the civil penalty was not assessed in accordance with applicable statutes or regulations of the Department, he or she may amend or dismiss the civil penalty. The licensee shall be notified in writing of the Deputy Director's decision within 60 days of the request to review the Program Administrator's decision.

Upon exhausting the Deputy Director review, a licensee may appeal to an Administrative Law Judge. The licensee must submit a written request for this review to the Regional Manager at the licensing office with jurisdiction over the facility. Proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the Department shall have all the powers granted by those provisions. In all proceedings conducted in accordance with this section, the standard of proof shall be by a preponderance of the evidence.

ADDENDUM C
SAMPLE LETTER
CIVIL PENALTY DETERMINATION UPHELD

[Date]

[Facility Name]

[Facility Address]

Re: REQUEST FOR REVIEW OF CIVIL PENALTY

In response to your request for a formal review of a civil penalty that was assessed pursuant to Health and Safety Code section _____ for a violation determined to have resulted in the death or serious bodily injury or constitutes physical abuse of a person receiving care and supervision, **you are hereby notified that the initial civil penalty determination has been upheld.**

Any outstanding civil penalties are due at this time.

As provided by statute, you have the right to appeal this penalty. Within the Community Care Licensing Division (CCLD), you have the right to request a formal review of the penalty by a Regional Manager, then by a Program Administrator, and then by the Deputy Director of the CCLD. Any request for review within CCLD must be made within 10 days from your receipt of this notice. Upon exhausting the appeals process within CCLD, you may appeal this civil penalty to an Administrative Law Judge by submitting a request in writing to the Regional Manager of the CCLD licensing office with jurisdiction over the facility.

If you wish to pursue a further appeal of this civil penalty, please submit a written request, along with all supporting documentation and the invoice number of the initial penalty, to:

[Name of next potential reviewer; title]

[Contact information]

[Contact information]

Sincerely,

[Name, position]

[Office # and Name]

[Contact information]

Community Care Licensing Division

ACTION REQUIRED

Assembly Bill 2386 (Mullin), Chapter 503, Statutes of 2014

Affects: Community Care Facilities (CCFs),
Children's Residential Facilities and Certified Family Homes,
Residential Care Facilities for the Elderly (RCFE),
Residential Care Facilities for the Chronically Ill (RCF-CI), and
Child Care Centers (CCCs) and Family Child Care Homes (FCCHs).

Subject: Care facilities: carbon monoxide detectors

Summary: [Assembly Bill 2386](#) amended Sections [1597.45](#) and [1597.46](#) and added Sections [1503.2](#), [1568.043](#), [1569.311](#), [1596.954](#), and [1597.543](#) to the Health and Safety Code (HSC), establishing carbon monoxide detector requirements for all licensed facilities and certified family homes.

OVERVIEW

Effective January 1, 2015, this law requires all licensed facilities and certified family homes, as specified, to have one or more carbon monoxide (CO) detectors in the facility that meet specific standards, and requires the Department to account for their presence during inspections.

IMPLEMENTATION

During inspections, the Licensing Program Analyst (LPA) will ensure the presence of one or more State Fire Marshal (SFM) approved CO detectors and shall ensure that the power/alarm light indicator is on.

In California, the marketing, distribution, or sale of CO devices is prohibited unless they are approved and listed by the SFM, who is required to develop a certification and decertification process to list CO devices and to disapprove and remove previously approved devices from the list, if necessary.

A current online list of approved CO detectors from the SFM is available at:
http://osfm.fire.ca.gov/strucfireengineer/strucfireengineer_bml.php

Note: This list is annually or periodically updated

The LPA, using the most *current* list online, will ensure the CO detector(s) in the facility are SFM approved for use.

Until regulations are updated, LPAs will cite the following statutes for noncompliance, based on the type of facility or home:

- HSC Section [1503.2](#) for CCFs including Children's Residential Facilities and Certified Family Homes.
- Health and Safety Code Section [1596.954](#) for CCCs.
- Health and Safety Code Section [1597.543](#) for FCCHs.

- Health and Safety Code Section [1568.043](#) for RCF-CI
- Section [1569.311](#) for RCFE.

ACTION REQUIRED

Senate Bill 856 (Committee on Budget and Fiscal Review), Chapter 30, Statutes of 2014

Affects: Community Crisis Homes and Enhanced Behavioral Supports Homes (EBSHs) pilot program. EBSHs are a subcategory of Adult Residential Facilities (ARF).

[EBHSs may also be a subcategory of Group Homes. Please refer to the SB 856 Implementation Plan for Children's Residential Facilities.]

Subject: Community Crisis Homes (CCHs) and EBSHs pilot program.

Summary: [Senate Bill \(SB\) 856](#), effective June 20, 2014, was the 2014 Developmental Services Trailer Bill. It adds Sections: [1502\(a\)\(16\)](#), [1567.61\(a\)-\(c\)](#), [1567.62\(a\)-\(g\)](#), [1567.63](#), [1567.64](#), [1567.65](#), [1567.66](#), [1567.67\(a\)-\(b\)](#), [1567.68\(a\)-\(c\)](#), [1567.69](#), and [1567.70](#), [1567.80\(a\)-\(b\)](#), [1567.81\(a\)-\(e\)](#), [1567.82\(a\)-\(b\)](#), [1567.83\(a\)-\(b\)](#), [1567.84](#), [1567.85](#), [1567.86\(a\)-\(b\)](#), and [1567.87\(a\)-\(c\)](#) to the Health and Safety Code as well as [Welfare and Institutions Code \(WIC\), Division 4.5, Chapter 6, Article 3.6](#). Among other things, it created two new sub-categories of facilities: Community Crisis Homes and the EBSHs pilot program. Both categories are to be certified by the California Department of Developmental Services (CDDS) and licensed by the California Department of Social Services (CDSS).

Overview of New Sub-Category

Community Crisis Homes

- CDDS certification is required.
- Licensed by CDSS as a subcategory of an ARF.
- CDSS licensure is contingent on the initial and continued CDDS certification.
- Maximum capacity of eight (8) clients per CCH.
- A CCH using delayed egress devices may utilize secured perimeters.
- CCH clients are individuals with developmental disabilities receiving regional center service, in need of crisis intervention services, and who would otherwise be at risk of admission to the acute crisis center at Fairview Developmental Center, Sonoma Developmental Center, an acute general hospital, acute psychiatric hospital, an institution for mental disease, or an out-of-state placement.
- Regulations for the CCH category shall be developed in both Title 17 and Title 22 by CDDS and CDSS, respectively.

Enhanced Behavioral Supports Homes Pilot Program

- CDDS certification is required.
- Licensed by the CDSS as a subcategory of an ARF or Group Home.
- CDSS licensure is contingent on continued CDDS certification.
- Only six (6) EBSHs shall be approved per fiscal year.
- No more than two (2) EBSHs using delayed egress devices in combination with secured perimeters may be certified by the CDDS during the first fiscal year of the pilot program. No more than one (1) additional home using delayed egress devices in combination with a secured perimeter may be certified by the CDDS in each subsequent year of the pilot program.
- Maximum capacity of four (4) clients per EBSH.
- Clients are individuals with developmental disabilities who require enhanced behavioral supports, staffing, and supervision in a homelike setting.
- Regulations for the EBSH category shall be developed in both Title 17 and Title 22 by the CDDS and CDSS, respectively.
- The EBSH pilot program shall be repealed on January 1, 2020.

This bill establishes the following requirements:

Community Crisis Homes <i><u>Health and Safety Code (HSC), Division 2, Chapter 3, Article 9.7</u></i>	
HSC Code	Requirement
<u>1502(a)(16)</u> <i>Definition of “community crisis home” CCH</i>	“Community Crisis Home” (CCH) means a facility certified by CDDS and licensed by CDSS as an ARF, providing twenty-four (24) hour nonmedical care to individuals with developmental disabilities receiving regional center service, in need of crisis intervention services, and who would otherwise be at risk of admission to an acute crisis center, an acute general hospital, acute psychiatric hospital, an institution for mental disease, or an out-of-state placement. A CCH shall have a maximum capacity of eight consumers.
<u>1567.80(a)</u> <i>Definition of “consumer” or “client”</i>	A “consumer” or “client” means an individual who has been determined by a regional center to meet the eligibility criteria of Section 4512 of the Welfare and Institutions Code and applicable regulations, and for whom the regional center has accepted responsibility.
<u>1567.80(b)</u> <i>Definition of “individual behavior support plan”</i>	Means the plan that identifies and documents the behavioral and intensive support and service needs of a consumer and details the strategies to be employed, and services to be provided, to address those needs, and includes the entity responsible for providing those services and timelines for when each identified individual behavioral support will commence.
<u>1567.81(a)-(e)</u> <i>Licensure and responsibilities</i>	Each CCH shall be licensed as an ARF and certified by CDDS. Certification by CDDS shall be a condition of licensure for the CCH by CDSS. CDSS shall not issue a license until the certificate of program approval has been received. CDSS shall not be responsible for any of the following: developing and approving a consumer’s individual behavior support plan; or oversight of any services that may be provided by a licensed health or licensed mental health professional to a consumer. This

Community Crisis Homes <u><i>Health and Safety Code (HSC), Division 2, Chapter 3, Article 9.7</i></u>	
HSC Code	Requirement
	does not limit CDSS' ability to enforce this chapter and applicable regulations.
<u>1567.82(a)-(b)</u> <i>Regulation development</i>	CDSS regulations to address: staffing structure, staff qualifications, and training; training requirements shall include a minimum of sixteen (16) hours of emergency intervention training.
<u>1567.83(a)-(b)</u> <i>Interdepartmental communication & administrative action</i>	When CDSS determines that urgent action is necessary to protect CCH from physical or mental abuse, abandonment, or any other substantial threat to their health and safety, CDSS shall notify CDDS and CDSS may temporarily suspend or revoke the license of a CCH.
<u>1567.84</u> <i>Plan of operation</i>	The licensee shall submit the facility program plan approved by CDDS to CDSS as part of the facility plan of operation. The plan of operation shall be approved by CDSS prior to licensure.
<u>1567.85</u> <i>Delayed egress device & secured perimeters</i>	If applicable, a CCH shall be in compliance with Section 1531.15 and the applicable regulations.
<u>1567.86(a)-(b)</u> <i>Interdepartmental communication</i>	CDSS shall revoke the CCH's license when CDDS has rescinded certification. CDSS and regional centers shall provide CDSS all available documentation and evidentiary support necessary for the licensing and administration of CCHs' enforcement of this article and applicable regulations.
<u>1567.87(a)-(c)</u> <i>No licensing until Title 17 regulations publication</i>	A license shall not be issued pursuant to this article until the publication in Title 17 of the California Code of Regulations of emergency regulations filed by CDDS. Emergency regulations to implement this article shall be adopted by CDSS. Such regulations are deemed urgent and necessary and are exempt from the requirement that they describe specific facts showing the need for immediate action.

Welfare and Institutions Code (WIC), Division 4.5, Chapter 6, Article 8:
Community Crisis Home Certification

WIC Article 8 has provisions similar to those established in Article 9.7 of the Health and Safety Code and is the source for the Title 17 regulations projected to be published in 2015 by CDSS. WIC Article 8 requires the same interdepartmental communication for CDDS as is required for CDSS specific to administrative actions and licensure. WIC Article 8 provides further instruction on rate structures and regional center responsibilities for CCHs and will be described by the Title 17 regulations under development by CDDS.

Enhanced Behavioral Supports Homes Pilot Program <u><i>Health and Safety Code (HSC), Division 2, Chapter 3, Article 9.5</i></u>	
HSC Code	Requirement

Enhanced Behavioral Supports Homes Pilot Program <u><i>Health and Safety Code (HSC), Division 2, Chapter 3, Article 9.5</i></u>	
HSC Code	Requirement
<u>1502(a)(15)</u> <i>Definition of EBSH</i>	EBSH means a facility certified by CDDS and licensed by CDSS as an adult residential facility or a group home that provides twenty-four (24) hour nonmedical care to individuals with developmental disabilities who require enhanced behavioral supports, staffing, and supervision in a homelike setting. An EBSH shall have a maximum capacity of four (4) consumers.
<u>1567.61(a)</u> <i>Definition of “consumer” or “client”</i>	“Consumer” or “client” means an individual who has been determined by a regional center to meet the eligibility criteria of Section 4512 of the Welfare and Institutions Code and applicable regulations and for whom the regional center has accepted responsibility.
<u>1567.61(b)</u> <i>Definition of “individual behavior supports plan”</i>	“Individual behavior supports plan” means the plan that identifies and documents the behavior and intensive support and service needs of a consumer and details the strategies to be employed and services to be provided to address those needs, and includes the entity responsible for providing those services and timelines for when each identified individual behavior support will commence.
<u>1567.61(c)</u> <i>Definition of “individual behavior supports team”</i>	“Individual behavior supports team” means those individuals who develop, monitor, and revise the individual behavior supports plan for consumers residing in an EBSH.
<u>1567.62(a)-(g)</u> <i>Licensure and responsibilities</i>	Each EBSH shall be licensed as an ARF or a group home and certified by CDDS. A certificate of program approval issued by CDDS shall be a condition of licensure. An EBSH shall not be licensed by CDSS until the certificate of program approval has been received. CDSS shall not be responsible for any of the following: developing and approving a consumer’s individual behavior supports plan; oversight of any services that may be provided by a licensed health professional or licensed mental health professional to a consumer. This does not limit CDSS’ ability to enforce this chapter and applicable regulations.
<u>1567.63</u> <i>Plan of operation</i>	The license applicant shall submit a facility program plan to CDDS for approval and submit the approved plan to CDSS as part of the facility plan of operation. The plan of operation shall be approved by CDSS Services prior to licensure.
<u>1567.64</u> <i>Regulation development</i>	CDSS shall address in regulations, at a minimum, staffing structure, staff qualifications, and training. Training requirements shall include a minimum of sixteen (16) hours of emergency intervention training.
<u>1567.65</u> <i>Interdepartmental communication</i>	When CDSS determines that urgent action is necessary to protect EBSH from physical or mental abuse, abandonment, or any other substantial threat to their health and safety, CDSS shall notify CDDS. CDSS may request that the regional center take action within twenty-four (24) hours, which may include the removal of a consumer from the EBSH. When possible, an individual program plan (IPP) meeting shall be convened to determine the appropriate action pursuant to this section. In any case, an

Enhanced Behavioral Supports Homes Pilot Program <u><i>Health and Safety Code (HSC), Division 2, Chapter 3, Article 9.5</i></u>	
HSC Code	Requirement
	IPP meeting shall be convened within thirty (30) days following an action under this section.
<u>1567.66</u> <i>Plan of operation</i>	An EBSH employing secured perimeters shall comply with HSC Section 1531.15 and applicable regulations.
<u>1567.67(a)-(b)</u> <i>Interdepartmental communication</i>	CDSS shall revoke EBSH's license when CDSS has rescinded certification. CDDS and regional centers shall provide CDSS all available documentation and evidentiary support necessary for the licensing and administration of EBSHs and enforcement of this article and the applicable regulations.
<u>1567.68</u> <i>No license until Title 17 regulations published</i>	A license shall not be issued pursuant to this article before regulations for this article filed by CDDS have been published. CDSS shall adopt emergency regulations to implement this article. Such regulations are deemed urgent and necessary and are exempt from the requirement that they describe specific facts showing the need for immediate action.
<u>1567.69</u> <i>Administrative action</i>	Nothing in this article shall interfere with the authority of the CDSS to temporarily suspend or revoke the license of an EBSH.
<u>1567.70</u> <i>End of pilot program</i>	This article shall remain in effect only until January 1, 2020.

Welfare and Institutions Code (WIC), Division 4.5, Chapter 6, Article 3.6:

Enhanced Behavioral Supports Homes

WIC Article 3.6 has provisions similar to those established in Article 9.5 of the Health and Safety Code and is the source for the Title 17 regulations projected to be published in 2015 by CDDS. This article gives CDDS the authority to implement this pilot program, establishes the number of EBSHs, and how many EBSHs may utilize secured perimeters. Further instruction on rate structures and regional center responsibilities for EBSHs is addressed in WIC Article 3.6 and will be described by the Title 17 regulations that are under development by CDDS.

Implementation:

CDSS shall promulgate Title 22 regulations for both CCHs and EBSH pilot program to include, but not be limited to: definitions to distinguish between ARFs and EBSHs and CCHs, staffing structure, staff qualifications, and training; training requirements shall include a minimum of 16 hours of emergency intervention training for both facility types. CDSS will provide training and relevant documents necessary for the licensure, oversight and Title 22 regulatory enforcement for both facility categories.

Until regulations are promulgated, if an application is received for a CCH or an EBSH (or an ARF application is received that appears to closely align with program operations of a CCH or an EBSH), a Licensing Program Analyst should immediately notify a Licensing Program Manager for assistance in processing the application. This bill does not prohibit CDSS from any of the pre-licensure activities. No license shall be issued without Program Office Program Administrator or Assistant Program Administrator approval pending regulatory definitions of these categories.

Note: A CCH or an EBSH cannot be licensed until CDDS certification is received.